

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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DUSTIN BAIN and T.B. *by his father and natural  
guardian,*

Plaintiffs,

- against -

TOWN OF HEMPSTEAD and TOWN OF  
HEMPSTEAD ANIMAL SHELTER,

Defendants.

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TOWN OF HEMPSTEAD,

Third-Party Plaintiff,

- against -

A FURR-EVER HOME, INC., LUCRECIA  
SKELLENGER, SHAWN BARROWS, and  
JOYCE BARROWS,

Third-Party Defendants.

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**A. KATHLEEN TOMLINSON, Magistrate Judge:**

Presently before the Court is Defendants' motion for summary judgment against all three of Plaintiffs' claims. *See generally* Defendants' Memorandum of Law in Support of Motion for Summary Judgment ("Defs.' Mem.") [DE 36-2]; Defendants' Reply Memorandum of Law in Further Support of Motion for Summary Judgment ("Defs.' Reply") [DE 37]. Defendants claim that there can be no strict liability against the Defendant Town where it did not own or control the dog who inflicted injury on the minor Plaintiff and that there was no special relationship between the Town and the Plaintiffs giving rise to a special duty of care which would render the Town liable. Plaintiffs oppose the motion, arguing, among other things, that The Town of

**ORDER**

CV 17-6554 (AKT)

Hempstead did not warn third-party defendant A Furr-Ever-Homes of the dog's vicious propensities and that the Town owed a special duty to Plaintiff which it breached because its employees chose not to comply with the surrendering dog owner's euthanasia request and instead placed the dog elsewhere. *See generally* Memorandum of Law in Opposition to the Defendants' Motion for Summary Judgment ("Pls.' Opp'n") [DE 40]. Defendants' motion for summary judgment is hereby GRANTED. The Court's written decision will follow.

**SO ORDERED.**

Dated: Central Islip, New York  
November 30, 2020

/s/ A. Kathleen Tomlinson  
A. KATHLEEN TOMLINSON  
U.S. Magistrate Judge